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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.No.74 of 2004

Commissioner of Income Tax
Coimbatore. .. Appellant

Vs

M/s.Lakshmi Trust Co.
Erode .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 29.5.2003 in ITA.No.1188/Mds/2001 for the Assessment year 1997-98 against the order of the Commissioner of Income Tax (Appeals) 121, Mahatma Gandhi Road, Chennai -34 dated 30.04.2001 in Appeal Nos.888 and 887/99-2000/SIM against the order of the Joint Commissioner of Income-Tax Salem Range, Salem dated 28.09.1999 in GIR.No.L-1341/W-1(1) FRD for the Assessment year 1997-98.

For Appellant : Mr.J.Narayanaswamy,
Jr.Standing Counsel (IT)
For respondent : Mr.J.Balachander

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

At the instance of the Revenue, the appeal is directed against the order of the Income-tax Appellate Tribunal dated 29.5.2003 in ITA.No.1188/Mds/2001, raising the following substantial questions of law:

1. Whether in the facts and under the circumstances of the case, the Appellate Tribunal was right in holding that penalty under section 271-D cannot be imposed for violation of section 269 SS if there is no intention to evade tax and the transactions are genuine?

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2. Whether in the facts and under the circumstances of the case, the Appellate Tribunal was right in holding that penalty under section 271E cannot be imposed for violation of section 269T if there is no intention to evade tax and the transactions are genuine?

2.1. The respondent assessee filed its return for the assessment year 1997-98. The assessing officer found that the assessee had taken a cash loan violating the provisions of section 269-SS of the Income-tax Act, 1961 (in short 'the Act') and repaid the amount in cash violating section 269-T of the Act and levied penalty of Rs.2,55,000/- under section 271D and Rs.60,000/- under section 271-E of the Act.

2.2. Aggrieved by the order of assessing officer imposing penalty, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who, by order dated 30.4.2001, held that the business of the assessee which was done mostly in Erode required cash purchases which made the assessee to accept loans in cash from sister concerns and that repayments to sister concerns were also made in cash. The Commissioner of Income-tax (Appeals), finding that the transactions of loans were genuine and the identity of lenders was not in doubt, cancelled the penalties under section 271D and 271E of the Act.

2.3. On appeal by the Revenue, the Appellate Tribunal, considering the fact that the transaction did not result in treatment of loan as unexplained cash credit because it was found to be fully explained, held that there was no intention on the part of the assessee to contravene the provisions of section 269-SS of the Act and accordingly, upheld the order of the Commissioner of Income-tax (Appeals). Aggrieved by the same, the Revenue has preferred this appeal raising the questions of law referred to above.

3. Mr.Narayanaswamy, learned counsel appearing for the Revenue contends that sections 269-SS and 269T of the Act are mandatory and no mens rea needs to be proved before penalty is imposed. He further submits that the assessee had no sufficient reasons to take the loans in cash.

4. Per contra, learned counsel appearing for the assessee, referring to two decisions of this Court in (i) CIT v. Kundrathur Finance and Chit Co. (283 ITR 329) and (ii) CIT v. Ratna Agencies (284 ITR 609), contends that if the Appellate Tribunal is satisfied that the transactions are genuine and bona fide, penalty could not be imposed, particularly when there was no evasion of tax.

5. We have given our careful consideration to the submissions made on either side.

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6. This Court in CIT v. Kundrathur Finance and Chit Co. (283 ITR 329), following the decision of Apex Court in Asst. Directior of Inspection (Investigation) v. Kum.A.B.Shanthi (255 ITR 258), held that if there was genuine and bona fide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.

7. In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal found on facts that the transactions were genuine and the identity of the lenders was also satisfied. The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

8. Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on facts, following the decision of this Court in CIT v. Ratna Agencies (284 ITR 609) wherein it was held that the finding recorded by the Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this Court to interfere with such a finding of fact.

9. For all these reasons, answering the questions of law referred to us against the Revenue, the appeal stands dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "D", Chennai.
2.The Commissioner of Income Tax
(Appeals), Madras,
121, Mahatma Gandhi Road, Chennai - 34.
3.The Joint Commissioner of Income-tax,
Salem Range, Salem.

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4.The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.
5.The Commissioner of Income Tax,
Coimbatore.

1 cc To Mr.N.Muralikumaran, Senior Standing Counsel for IT, SR.63472.
1 cc To Mr.J.Balachander, Advocate, SR.63404.

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RVL 05.01.2007

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